

CLIENT ALERT

Defense Production Act (DPA) a Critical Component of Biden Strategy for COVID-19

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The Biden administration has identified the Defense Production Act (DPA) as a key part of its new “[National Strategy for the COVID-19 Response and Pandemic Preparedness](#)” (Strategy), buttressed by a new “[Executive Order on a Sustainable Public Health Supply Chain](#)” (Executive Order). Issued on January 21, 2021, the Biden administration’s Strategy calls for immediate action to address critical shortfalls of vaccination supplies, testing supplies, and personal protective equipment (PPE). The Executive Order, issued the same day, directs agencies to use “all available legal authorities, including the Defense Production Act, to fill those shortfalls as soon as practicable by acquiring additional stockpiles, improving distribution systems, building market capacity, or expanding the industrial base.”

The Strategy identifies certain areas in which supply shortfalls are believed to exist. These include “supplies like N95 masks, isolation gowns, nitrile gloves, polymerase chain reaction (PCR) sample collection swabs, test reagents, pipette tips, laboratory analysis machines for PCR tests, high absorbency foam swabs, nitrocellulose materials for rapid antigen tests, rapid test kits, low dead-space needles and syringes.” More generally, the Strategy calls for action under the DPA to fill shortfalls of “all the necessary equipment and material to accelerate the manufacture, delivery, and administration of COVID-19 vaccine.”

Under the Executive Order, the Secretary of Health and Human Services also is required to advise the President “promptly” of any changes needed to the March 2020 [Executive Order 13910](#), “Preventing Hoarding of Health and Medical Resources to Respond to the Spread of COVID-19.” That executive order, which remains in effect, delegates DPA authority to the Secretary to restrict the hoarding of health and medical resources necessary to the COVID-19 response.

You can access Crowell & Moring’s [recent webinar here](#) discussing the DPA, lessons learned in 2020, and preparing for its use in the coming year. Additionally, you can find summaries of the [DPA here](#) and [Defense Priorities and Allocations System \(DPAS\) here](#).

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